

AUTHORIZING SETTLEMENT FOR CERTAIN INEQUITABLE LOSSES
IN PAY SUSTAINED BY OFFICERS OF THE COMMISSIONED
SERVICES UNDER THE EMERGENCY ECONOMY LEGISLATION

JUNE 26, 1956.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. FORRESTER, from the Committee on the Judiciary, submitted the
following

R E P O R T

[To accompany H. R. 5888]

The Committee on the Judiciary, to whom was referred the bill (H. R. 5888) to authorize settlement for certain inequitable losses in pay sustained by officers of the commissioned services under the emergency economy legislation, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

Page 1, line 6, strike out "pay period or".

Page 2, line 13, strike out "one year", and insert in lieu thereof "two years".

The Department of Defense in its letter to the chairman, dated June 14, 1956, states that it has no objection to the enactment of the bill as modified by the proposed amendments. Therefore, your committee has amended the bill to conform with that recommendation. The facts will be found fully set forth in statement of the Retired Officers Association before this committee, and, therefore, your committee concurs with the Department of Defense and this organization.

The Department of Defense endorses this legislation, stating that "it would remove an injustice of long standing."

It adheres to that view and incidentally quotes in passing a budget statement that it would be "entirely inappropriate" to correct an admitted injustice because "more than 20 years" have passed after it occurred, and that it would establish a "precedent."

The proposed legislation does not provide for reimbursement of \$1 to anyone for Economy Act reductions. It simply insures that the

only employees discriminated against under the economy legislation will finally receive their full statutory pay and then only after the Economy Act reductions were made. It thus applies solely to a small group of officers of the commissioned services. Civilian employees were not discriminated against as were these few officers. That fact was established conclusively at the committee hearings.

The bill corrects a mistake of law as the Department of Defense observes.

The bill will not establish a "precedent." It will lay the matter to rest because there will remain no individual or group who could or would claim reimbursement.

The Department of Defense is right; the greater the delay in removing this "injustice of long standing," the greater the injustice becomes.

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE,
Washington, D. C.

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: Reference is made to a report addressed to you dated October 28, 1955, setting forth the views of the Department of Defense on H. R. 5888, a bill to authorize settlement for certain inequitable losses in pay sustained by officers of the commissioned services under the emergency economy legislation, and for other purposes.

That report stated that the Department of Defense opposed the enactment of H. R. 5888. However, since preparation of that report, the Department of Defense has made further study of the proposal.

Also, subsequently, on April 23, 1956, the sponsor of the bill, Congressman Cecil R. King, advised the Department of Defense that certain amendments to the bill had been agreed upon in conference which would confine reimbursement to those officers who were nominated by the President for a higher rank and confirmed by the Senate.

Enactment of H. R. 5888 would remove an injustice of long standing and one which was imposed upon officers actually advanced in rank as distinguished from those due increases in pay based upon longevity or advancement to the next pay period. It is believed that the Congress did not mean to impose this inequity on these officers.

After further consideration of the bill and the amendments proposed thereto, the Department of Defense wishes to advise that it has no objection to the enactment of H. R. 5888 as modified by the proposed amendments.

It should be noted, however, that no provision has been made in the budget of the Department of Defense for fiscal year 1956 or 1957 to cover the cost of this legislation if enacted.

The Bureau of the Budget has advised—

"At the time of our initial review of the proposal contained in H. R. 5888, the Bureau of the Budget concurred in the compelling arguments presented in the earlier report of the Department of Defense. To restore certain reductions in pay at a time more than 20 years after they were imposed seems to us to be entirely inappropriate. Furthermore, such action would establish a precedent for the retroactive

alteration of other equally restrictive policies contained in the Economy Acts.

"For these reasons the Bureau of the Budget continues to oppose very strongly the proposal set forth in H. R. 5888."

Sincerely yours,

LORNE KENNEDY,
Deputy for Legislative Affairs.

STATEMENT OF THE RETIRED OFFICERS ASSOCIATION

The Retired Officers Association, composed of many thousands of retired commissioned officers and warrant officers, Regular and Reserve, male and female, of the Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service, appreciates the courtesy of being afforded an opportunity of appearing here today to testify relative to H. R. 5888 having to do with the proposed settlement of certain inequitable losses in pay sustained by officers of the commissioned services under the Emergency Economy Act of 1932.

H. R. 5888, as introduced, would authorize payments to certain commissioned officers, or former officers, of the uniformed services including widows and legal representatives of such officers where deceased, certain increases in pay, to be determined in each case by the Comptroller General, which increases in pay were, in 1932-34, earned by certain officers of the above-mentioned services but were denied to such officers at that time by reason of what is considered to have been an improper interpretation of section 201 of the Economy Act of June 30, 1932 (47 Stat. 403), and section 4 (a), title II, of the act of March 20 1933 (48 Stat. 13).

The wording of this bill, H. R. 5888, on page 1 thereof, at lines 6, 7, 8, and 9, covers officers, "who, upon advancement in pay period or rank, did not receive an increase in the rates of pay or allowance for any part of the period beginning July 1, 1932, and ending June 30, 1934," etc.

Attention is especially invited to part of the above wording which covers two conditions; namely, (a) advancement in pay period, and (b) advancement in rank. In our discussion to follow we shall confine ourselves to the latter condition, i. e., advancement in rank, as we consider that provision highly meritorious and feel strongly that relief most certainly should be given to officers advanced in rank during the period from July 1, 1932, to June 30, 1934, but who were denied the increased pay of the rank to which advanced. Such officers not only failed to receive the increased pay of the higher rank to which advanced but, on the other hand, were actually compelled to continue under the pay scale of their old rank together with a 15-percent reduction of that old pay scale.

This result was unintentional and was brought about by an unduly harsh construction of the law.

Section 201 of the Economy Act of 1932 required the suspension for the fiscal year 1933 of automatic increases in compensation of employees of the Government, civilian and military, by reason of length of service or promotion. This suspension of automatic in-

creases was continued in effect for the fiscal year 1934 by the provisions of the Economy Act of 1933 (act of March 20, 1933; 48 Stat. 13).

Had the above-mentioned provisions of law been applied equally to both military personnel and civilian employees of the Government, there would be no justification for legislation at this time. Such, however, was not the case. Certain military officers were subjected to greater losses from their pay than were the majority of military personnel and all civilian employees of the Government, for which losses restitution should now be made.

Section 201 of the Economy Acts in its application to military officers was interpreted not only to apply to longevity increases in pay for service or promotion which were automatic in character, but, with reference to military officers, this section was interpreted also to apply to withhold increases in pay due to actual promotions in rank—promotions which involved increases in responsibility and brought additional expenses to the officers concerned.

The same interpretation did not apply to civilian employees of the Government in view of the fact that section 202 of the Economy Acts withheld from such civilian employees increases in pay only for administrative promotions, but not for promotions in grade. In other words, the comparatively small group of military officers who were promoted during the fiscal years 1933 and 1934 were not only subjected to the pay reductions generally applicable to all employees of the Government, civilian and military, but they were required to serve in higher ranks with increased responsibility at the same pay they were formerly receiving, reduced by the general pay reductions imposed upon employees of the Government in the interests of economy.

Sections 201 and 202 of the Economy Acts of 1932 and 1933 are quoted as follows:

"SEC. 201. All provisions of law which confer upon civilian or noncivilian officers or employees of the United States Government or the municipal government of the District of Columbia automatic increases in compensation by reason of length of service or promotion are suspended during the fiscal year ending June 30, 1933; but this section shall not be construed to deprive any person of any increment of compensation received through an automatic increase in compensation prior to July 1, 1932.

"SEC. 202. No administrative promotions in the civil branch of the United States Government or the government of the District of Columbia shall be made during the fiscal year ending June 30, 1933: *Provided*, That the filling of a vacancy, when authorized by the President, by the appointment of an employee of a lower grade, shall not be construed as an administrative promotion but no such appointment shall increase the compensation of such employee to a rate in excess of the minimum rate of the grade to which such employee is appointed, unless such minimum rate would require an actual reduction in compensation. The President shall submit to Congress a report of the vacancies filled under this section up to November 1, 1932, on the first day of the next regular session. The provisions of this section shall not apply to commissioned, commissioned warrant, warrant, and enlisted personnel, and cadets of the Coast Guard."

The interpretation which was placed upon section 201 of the Economy Act of 1932 prohibited increases in pay which resulted from

actual promotions in rank. Such interpretation and application was never intended by Congress. Section 202 of the same act prohibited only "administrative promotions" but allowed increases in pay for promotions from a lower to a higher grade in the civil service. The same result was intended by Congress with reference to promotions in the military service.

As a result of having pointed out to it the unfair and apparently unintended effect of the unfortunate phrasing of section 201 of the Economy Act of 1932, the Committee on Appropriations of the House of Representatives in Report No. 227 on the independent offices appropriation bill, 1934, in recommending amendment of that section stated in part:

"The committee feels that in continuing the general economy legislation for the fiscal year 1935 there should not be a total relaxation in the prohibition against automatic promotions and that *whatever is done continuing the prohibition in that respect should be based upon equal treatment to all persons in all the automatic groups.* The ban upon automatic promotions is, therefore, continued for the next fiscal year, modified in one respect to correct *an injustice resulting more from interpretation than from legislative intent,* the explanation of which appears hereinafter. [Emphasis supplied.]

"It has been brought to the attention of the committee that the *existing economy legislation denying automatic increases has been construed as applying to increases within the six 'commissioned' services upon advancement in rank.* That is, where an officer passes from a lower to a higher rank, he may have the rank but not the pay attached thereto, if the change normally would entail a higher rate of pay. Whether the advancement in rank in all cases means a change of duties or responsibilities or not, it is fair to assume that it does and *it is not believed that it was the intention of Congress to deny the pay the law provides for each rank under the conditions applicable in any given case.* [Emphasis supplied.]

"Advancement in rank, under the peculiar and complicated pay law applying to the several commissioned services does not always carry with it an increase of pay. The length-of-service factor enters into the question. *But where, under the law, considering such factor, increased rank carries increased pay, the committee believes that the spirit and intent of the law, if not the letter, should be complied with.* That accords with the general practice in the civil services where officers and employees of the Government who may, under existing and proposed economy laws, receive an increase in compensation when that increase is incidental to a promotion resulting from the filling of a vacancy from a lower to a higher position. [Emphasis supplied.]

"Consequently, the section touching automatic promotions which it is proposed to reenact has been modified to insure that officers advanced in rank shall receive such increase, if any, as may be attached to the new rank, but limiting the computation of longevity pay to the number of increments earned as of June 30, 1932. Longevity pay falls in the class of automatic increases and the amendment does not propose to disturb the suspension of increase normally flowing from the length of service. [Emphasis supplied.]

"The provision dealing with automatic promotions, if reenacted as amended, *will remove existing inequalities, will avoid discrimination, and will place, as near as possible, all officers and employees of the*

Government—military, quasi-military, and civil—upon an equal footing so far as prohibition of automatic increases in compensation is concerned during the fiscal 1935.” [Emphasis supplied.]

The history of the original law and the reactions to it clearly point out that those receiving pay under military services pay acts suffered reductions in pay that were not imposed on others in Government service. The heads of the armed services almost immediately invited the attention of Congress to this fact.

In a letter to the chairman of the Special Economy Committee, United States Senate, at the time the extension of the economy legislation to apply to fiscal year 1934 was under consideration, the then Secretary of the Navy expressed opposition to the provisions affecting the pay of officers. He called attention to the inequity and injustice of the provisions which prevented officers promoted to higher grades, during the life of the legislation, from receiving the pay and allowances of the grades to which promoted, in addition to barring their receipt of increase in pay due to longevity credits.

Under the date of December 13, 1932, the Secretary of War, in a letter addressed to the chairman, Special Economy Committee, United States Senate, expressed the following view concerning the above measure:

“In justice to this small group who are bearing such an unjust portion of the economy burden, the War Department appeals to Congress for the adjustment or elimination of section 201 of the Economy Act.”

The Bureau of the Budget early in 1934 also proposed a restoration of automatic increases in compensation of the personnel of the Army, Navy, and Marine Corps.

Efforts to effect relief as to the condition stated above make such a long story that it may, of itself, create a belief in the minds of some who have not looked into the matter that either there is no equity in the proposal or that the lapse of time make the whole idea suspect or doubtful. That, we submit, is no reason for permitting a clear discrimination and inequity to continue to stand. Earlier efforts as to this matter were laid aside during the World War II days, no doubt on the theory that more important things demanded attention by the Congress.

We shall not labor this matter now. We do submit to this committee the justice and equity of the proposal and ask action at once to further the passage of this highly meritorious bill especially to provide the outlined payments on the terms suggested in the measure as to officers advanced in rank in the period from July 1, 1932, to June 30, 1934.

To summarize, it is fair to say that the approval of this bill, with the deletion of the words “pay period or,” in lines 6 and 7 on page 1, would merely serve to carry out the original intent of Congress in enacting this particular provision of law.

The Retired Officers Association thanks the committee for this opportunity to appear and testify on this bill.

STATEMENT OF HON. CECIL R. KING, REPRESENTATIVE IN CONGRESS
FROM CALIFORNIA

This bill at long last will afford the opportunity to a small group of officers in the armed services to be reimbursed for loss of increased pay during the fiscal years 1934 and 1935. This increase was withheld from them by mistake.

The pay loss was due to misinterpretation of the so-called general economy legislation for the fiscal year 1935. "Automatic" pay increases were prohibited under it. But that term was construed to apply even to commissioned officers promoted and actually confirmed by the Senate. Congress never intended such a result. In fact, it corrected the situation prospectively in the Independent Offices Appropriation Act for 1935. But Congress overlooked correcting it for the 2 previous years. It is to that period only that this bill is directed.

Even Government civilian employees were favored over these commissioned officers. Pay increases to Government civilian employees when promoted in grade were specifically required by the economy law. The only increases prohibited were in those instances of automatic promotions, that is, because of length of service.

Thus, an Army captain promoted to the rank of major in July 1932 continued to receive only his captain's pay, even after Senate confirmation.

The bill does not restore deductions from pay that were required by the economy legislation. Nor will it invite further legislation by any Government personnel, as no similar situation arose in the administration of that legislation. Thus, enactment of the bill will not set any precedent whatever because no other class of Government employees were ever so affected.

In order to conform exactly with the intent of Congress, it has been suggested that the bill be amended so as to limit its application solely to officers advanced in rank during the period involved. This may be accomplished by eliminating the words "pay period or" on page 1.

As long ago as 1937 the Secretary of War vigorously urged correction of this injustice. Bills to do so have been introduced repeatedly in the Congress. I have submitted to this committee copies of a letter I wrote just a year ago to the President, and of the reply of his administrative assistant. The latter pointed out that "there seems to have been little justification" for the Economy Act provisions which denied increases in pay to officers promoted between July 1, 1932, and June 30, 1933; that this assessment is supported by the fact that the Congress repealed the restriction after it had been in effect only 2 years.

The Retired Officers Association and others have continuously advocated the passage of this bill. Its enactment at this time would be particularly appropriate in the light of the announcement on December 31, 1955, of findings by the Department of Defense regarding public attitude toward the military service as a career. Among the conclusions drawn from a survey are the following:

(1) Inadequate financial rewards is one of the greatest drawbacks of a military career;

(2) Military services would most likely succeed in their efforts to attract and retain the high quality of personnel necessary by increasing financial benefits * * *;

(3) Military men should be paid more than civilians in comparable jobs.

